lations advance in education and culture, many regulations, certainly, will become possible that a few years before would have been preposterous. It would be interesting to know how the New York court would have decided this question if it had been squarely before it.

SUBROGATION IN BEHALF OF A SURETY'S SURETY. — The right of a surety, when compelled to pay the debt, to be subrogated as against the principal debtor to the position of the creditor is, as a general proposition, unquestioned. While this right is often co-ordinate in its usefulness with the surety's other remedies of indemnity and exoneration, still its use frequently has obvious advantages. This is true when the principal is insolvent and the creditor holds securities,[1] or has a claim of especial dignity against the principal.[2] Like the surety's remedies of indemnity and exoneration, subrogation is equitable in its nature, and is accorded the surety to secure reimbursement.[3] It finds its justification in the fact that, as between principal and surety, the former is the only real obligor. The surety, while bound to the creditor, is not intended to bear the burden of the obligation. When, therefore, at the whim of the creditor, he is forced to liquidate his legal obligation, equity will prevent his suffering, and will throw the burden where it belongs.

The extent of this remedy of subrogation has been subject to some misapprehension in its application to a surety's surety. Thus in an early New York case,[4] it was held that a plaintiff who had become a surety to another, at the latter's instance, could not, on account of a defense in favor of the principal against the latter, claim subrogation against the principal. The court apparently proceeded on the ground that, as the plaintiff had become a surety at the request of the first surety only, and not at the request of the principal, he could stand in the position only of the first surety. The argument, however, fails to comprehend the situation. The primary feature to be noticed is that the principal, the first surety, and the surety to the surety are equally bound as obligors to the creditor. He can throw the burden of the obligation, in the first instance, on any one of them. The next and the important feature is that, in their relation to the principal debtor, the first surety and the surety to the surety stand as co-sureties. This is clear from the fact that the second surety became equally liable with the first surety. This legal obligation he was willing to assume because of the private agreement of suretyship between himself and the first surety. That the plaintiff did not become a surety at the request of the principal is unimportant. A party who becomes a surety even in the face of an express refusal by the principal to receive him as such, is nevertheless entitled to subrogation.[5] The equity of subrogation is not the result of contract, but of the burden of being compelled to pay another's debt. Upon analysis, therefore, since the plaintiff is a surety to the principal debtor, it follows that he is entitled to the ordinary surety's right of subrogation.

This right is recognized in the Virginia case of Leake *v.* Ferguson,[6] and

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[1] Goddard *v.* Whyte, 2 Gif. 449.
[2] Lidderdale *v.* Robinson, 12 Wheat. (U. S.) 594.
[3] Succession of Dinkgrave, 31 La. An. 703.
[4] New York State Bank *v.* Fletcher, 5 Wend. (N. Y.) 85.
[5] Mathews *v.* Aiken, 1 N. Y. 595.
[6] 2 Gratt. (Va.) 419.

it is gratifying to note that the opinion expressed in a recent New York case is contrary in effect to the earlier decision. *Kolb* v. *National Surety Co.*, 176 N. Y. 233. This latest conclusion is sound in theory, and it avoids the unfortunate result of allowing the creditor, at his caprice, to throw the burden of the obligation on an innocent party.

RECENT CASES.

ACCORD AND SATISFACTION — ACCEPTANCE OF PART PAYMENT STIPULATED TO BE PAYMENT IN FULL. — The defendant sent the plaintiff a check in payment of an unliquidated debt, saying, "I think this pays you well for what you have done for me. You insisted on my fixing the price." The plaintiff retained the check, and wrote the defendant that he applied it on account and did not take the amount in full settlement. *Held*, that the acceptance of the check does not constitute an accord and satisfaction. *Mack* v. *Miller*, 84 N. Y. Supp. 440.

The defendant sent checks as monthly payments on a contract, stating that they were to be in full of account. The plaintiff, who had previously declared that if sums of the amount sent were paid they could only be placed on account, retained the checks, making a protest the first month only. *Held*, that the facts show an accord and satisfaction. *Laroe* v. *Sugar Loaf Dairy Co.*, 84 N. Y. Supp. 609.

The defendant's agent tendered to the plaintiffs a certain amount in full settlement of a disputed claim. The plaintiffs accepted the sum tendered and signed a receipt in full, but stated to the defendant's agent at the time that they did not waive their right to the balance. *Held*, that there is an accord and satisfaction. *Cooper & Rock* v. *Yazoo, etc., R. R. Co.*, 35 So. Rep. 162 (Miss.). See NOTES, p. 272.

ADMIRALTY — HARTER ACT — WHAT CONSTITUTES "ERROR IN MANAGEMENT." By § 1 of the Harter Act (U. S. Comp. St. 1901, p. 2946) a vessel is responsible for damages arising from negligence in loading, care, "or delivery" of property committed to its charge. By § 3 the vessel is relieved from responsibility for damages "resulting from faults or errors in navigation or in the management of said vessel." A vessel reached port in winter with some two hundred tons of ice on deck. Through the negligent discharge of part of the cargo she became top-heavy, rolled over, and sank at the dock. *Held*, that the vessel is responsible for damages to the cargo still on board. *The Germanic*, 124 Fed. Rep. 1 (C. C. A., Second Circ.).

The property damaged was not that part of the cargo already unloaded, but the part of which the delivery was not yet begun. There could, therefore, be no negligence in its "delivery." The facts seem rather to bring the case under the third section, which exempts the vessel from liability. The "management" of a vessel includes the control of everything with which the vessel is equipped for the purpose of protecting her and her cargo against inroads of the sea. *The Silvia*, 171 U. S. 462. In a real sense the cargo itself serves this purpose, acting as the ballast which is necessary to the vessel's safety. Negligence in the handling of the cargo, therefore, might well be regarded as an "error in management." It is immaterial that the error was committed while the vessel was in port. *The Glenochil*, [1896] P. D. 10; *cf. Rowson* v. *Atlantic Transport Co.*, [1903] 1 K. B. 114.

ADMIRALTY — IMMUNITY OF GOVERNMENT VESSELS FROM ARREST. — A steam ferry-boat, built for the Crown, to be used in the operation of a railway managed by the government of the Dominion of Canada, was disabled on the high seas and towed into port. She was at the time in the course of being delivered by the builders and was the property of the Government. *Held*, that the vessel may not be libeled for salvage. *Young* v. *Steamship Scotia*, 89 L. T. 374 (Eng., P. C.). See NOTES, p. 270.

ADVERSE POSSESSION — CONTINUITY OF ADVERSE POSSESSION — TACKING. — A man held land adversely for fifteen years and died. His widow continued to occupy until her death many years later. The plaintiff claims through the heirs of the husband against the defendant in possession, who claims by deed from the widow. The court instructed that the plaintiff could tack the two possessions in order to satisfy the